

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Concord Transaction Services LLC)
a/k/a Harrah's Operating Company Memphis, LLC) Shelby County
Dist. D02, Block 07, Parcel 00346)
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,829,000	\$ -0-	\$2,829,000	\$1,131,600

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 7, 2007 in Memphis, Tennessee. The taxpayer was represented by David C. Scruggs, Esq. The assessor of property was represented by John Zelinka, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 36.89 acre tract located on Garrett Ridge Road in Memphis, Tennessee. Subject property is surrounded by properties of varying uses: agricultural, office and industrial.

The sole issue before the administrative judge concerns whether subject property should be subclassified commercially as contended by the assessor or residentially as maintained by the taxpayer. The parties are in agreement that resolution of this issue requires reference to Tenn. Code Ann. § 67-1-801(c) which provides as follows:

- (1) All real property that is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:
 - (A) Immediate prior use, if any;
 - (B) Location;
 - (C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property.
 - (D) Other legal restrictions on use;
 - (E) Availability of water, electricity, gas, sewers, street lighting, and public services;
 - (F) Size;
 - (G) Access to public thoroughfares; and
 - (H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

- (2) If, after consideration of all such factors, any such real property does not fall within any of the definitions and classifications in this section, such property shall be classified and assessed as farm or residential property.

The administrative judge finds that this case is unusual insofar as no witnesses testified and no formal stipulation of facts was placed in the record. Instead, the parties simply entered into evidence exhibits showing how properties in the immediate area are used. The exhibit also identifies properties which have sold. It is unclear how old those sales are.

Although the parties did not formally stipulate to the relevant facts, it appears from the comments of counsel that Harrah's Entertainment, Inc. purchased subject tract along with an adjoining parcel with an office building completed in early 2004. Apparently, it was assumed Harrah's purchased the property with the intention of moving its headquarters to the office building. The building was unoccupied on the relevant assessment date of January 1, 2006.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that the subclassification issue cannot be resolved without a formal stipulation of facts or testimony from at least one competent witness. For example, there is nothing in the record to establish Harrah's intentions for subject property at the time of its purchase. The administrative judge finds that counsel's comments on this issue constitute little more than argument based upon assumed facts that have not been proven.

Given the foregoing, the administrative judge finds that subject property should continue to be subclassified commercially based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization.

ORDER

It is therefore ORDERED that subject property be subclassified commercially and the following value and assessment remain in effect for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,829,000	\$ -0-	\$2,829,000	\$1,131,600

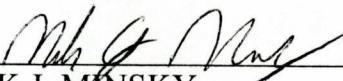
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 14th day of June, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: David C. Scruggs, Esq.
Tameaka Stanton-Riley, Appeals Manager